IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1040 OF 1998

Right Computer Services Pvt Ltd. ...Plaintiffs

Versus

Datapro Infoworld Ltd. ...Defendants

Shri Vipul Shukla for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 22, 2007.

ORAL JUDGMENT:

1. This suit is listed under the caption of "Undefended Suits for Exparte Decree". The Plaintiffs have filed the suit for declaration that the purported forfeiture of amount of Rs.3,90,000/- by the Defendants is illegal and contrary to law and that the Plaintiffs are entitled to refund/repayment of the said amount of Rs.3,90,000/- together with interest thereon at the rate of 18% per annum. The Plaintiffs have prayed for further interest at the rate of 18% per annum.

2. According to the case of the Plaintiffs they were desirous of setting up a Datapro Information Technology and Computer Training Centre at Dadar (W), Mumbai. A Memorandum of Understanding was arrived at by and between the parties on 09th April, 1994. As per the said Memorandum the Plaintiffs paid a sum of Rs.50,000/-

by way of security deposit to the Defendants on 13th April, 1994. The Plaintiffs paid registration fees of Rs.10,000/- to the Defendants. When the Memorandum of Understanding was executed by and between the parties, the premises in which the said training centre was to be established was under construction. Between May 1994 to August 1994 the Plaintiffs paid further amount of Rs.3,30,000/- to the Defendants by four cheques. According to the case of the Plaintiffs the Defendants failed to provide and/or supply an or install the equipment in the said premises though the Defendants received sum of Rs.3,90,000/-. Though the Plaintiffs were willing to start training centre in the said premises the Defendants started to decline the same on the ground that elevator system has not been installed.

3. According to the case of the Plaintiffs there was a meeting between their representatives and the Defendants and the minutes of meeting were recorded on 07th February, 1995 by a letter sent by the Plaintiffs to the Defendants. According to the case of the Plaintiffs it was agreed by and between the parties that the Memorandum of Understanding shall be deemed to have been withdrawn by both the parties. It was agreed that the Defendants will refund the sum of Rs.3,90,000/- at the earliest to the Plaintiffs. The Defendants while

acknowledging the receipt of the said letter inter alia stated that the Defendants had agreed to consider the possibility of waiving liquidated damages and the payments made under the Memorandum of Understanding were not refundable. The said endorsement was made on a copy of the letter dated 07th February, 1995 by a Director of the Defendants. A letter dated 17th February, 1997 raising the same contention was sent by the Defendants to the Plaintiffs.

4. By the Advocates letter dated 29th March, 1997 the Plaintiffs called upon the Defendants to make payment of Rs.3,90,000/- with interest. There was a further correspondence by the Advocates appearing for the parties. As the Defendants declined to refund the amount, the present suit has been filed. The Defendants have not filed the written statement.

5. The learned counsel for the Plaintiffs has tendered on record an affidavit of evidence of Ramchand Naraindas Menghani, a Director of the Plaintiffs who is conversant to the facts of the case. The said affidavit is marked "X" for identification and is taken on record. The learned counsel for the Plaintiffs has also tendered on record a compilation of documents. The said compilation is marked "Y" (collectively) for

identification and is taken on record. The Plaintiffs have produced the original documents in the said compilation. The original documents are proved by the affidavit of Shri Ramchand Menghani.

6. There does not seem to be any dispute regarding payment of Rs.03,90,000/- by the Plaintiffs to the Defendants. In paragraph No.7 of the affidavit of Shri Menghani, he has stated in the meeting which took place between the parties in February 1995, he was personally present alongwith Shri Deepak Kamdar, a Director of the Defendants and Shri Jailesh Shah, a representative of the Defendants. He has stated that in the said meeting it was agreed that the Memorandum of Understanding will stand cancelled and the Defendants will refund to the Plaintiffs all the amounts received by the Defendants under the said Memorandum of Understanding and neither party will have any claim or claims of any kind against each other. As stated earlier the Defendants disputed the aforesaid Understanding by letter dated 17th February, 1995. However, Shri Menghani who was personally present in the meeting has set out in the paragraph No.7 of his affidavit as to what transpired in the meeting. The Understanding which was arrived at said meeting regarding cancellation of Memorandum of Understanding and obligation of the Defendants to repay

the amount to the Plaintiffs has been duly proved by the said affidavit. Therefore, the case made out by the Plaintiffs will have to be accepted and a decree will have to be passed for refund of sum of Rs.3,90,000/-. The Plaintiffs have prayed that interest at the rate of 18% per annum from the date of filing of the suit till realisation. There is no specific agreement between the parties for payment of interest. However, the transaction between the parties is a commercial transaction. Considering the facts and circumstances of the case, further interest will have to be allowed at the rate of 10% per annum.

7. Hence, there will be a decree in terms of prayer clauses (a) to (c) with a modification that interest payable on sum of Rs.3,90,000/- will be at the rate of 10% per annum from the date of filing of the suit till payment or realisation.

8. The Plaintiffs will be entitled to refund of court fees, if any, as per the rules.

9. Certified copy is expedited.

JUDGE